

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

RENEE KAISER, as Conservator for
KALEB KAISER, a Minor,

Plaintiff,

Case No.: 20 -
Judge:

v

JAYCO, INC.,
a foreign corporation,

Defendant.

THOMAS W. WAUN (P34224)
MICHAEL E. FREIFELD (P48198)
JOHNSON LAW, PLC
Attorneys for Plaintiff
140 E. 2nd St., Ste. 201
Flint, Michigan 48502
(810) 695-6100
twapun@venjohnsonlaw.com
mfreifeld@venjohnsonlaw.com

There is no other pending or resolved civil action arising out of
the transaction or occurrence alleged in the Complaint.

COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, RENEE KAISER, as Conservator of
KALEB KAISER, a Minor, by and through her attorneys, JOHNSON LAW
PLC, and for her Complaint against the above-named Defendant, states as
follows:

1. At all times relevant to this lawsuit, Plaintiff, RENEE KAISER, (Renee) is the mother of her son, KALEB KAISER (Kaleb), (d/o/b: 10/7/15) and they live in Hubbard Lake, County of Alpena, State of Michigan.

2. At all times relevant to this lawsuit, Renee has been appointed as Conservator on behalf of Kaleb, a Minor.

3. At all times relevant to this lawsuit, Defendant JAYCO, INC. ("Jayco") is an Indiana corporation which designs, manufactures, and distributes Eagle Fifth wheel towables which are sold in the State of Michigan.

4. Prior to July 12, 2020, Jayco designed, manufactured, produced, advertised, marketed and sold Eagle Fifth wheel towables to the general public.

5. The amount in controversy exceeds \$75,000.00, exclusive of costs, interest and attorney fees.

6. Jurisdiction in this Court is established by 28 U.S.C. §1332 – Diversity of Citizenship.

7. Venue is proper in this Court because the cause of action arose in Alpena County, Michigan.

GENERAL ALLEGATIONS

8. On Sunday, July 12, 2020, Kaleb, his father – Chad, and Kaleb’s siblings were invited to Renee’s brother’s home located at 6439 Nicholson Hill, Hubbard Lake, Michigan for a family gathering.

9. Renee’s brother – Bennie Schultz – was the owner of a 2018 Jayco Eagle Fifth wheel that was located on his property.

10. The above-mentioned 2018 Jayco Eagle Fifth wheel had a slide out with razor sharp sheets of metal at the bottom of the slide out.

11. The 2018 Jayco Eagle Fifth wheel had no warnings and/or notices concerning the razor sharp sheets of metal at the bottom of the slide out on the fifth wheel.

12. On July 12, 2020, Kaleb decided to play with his younger cousin while visiting with his family located at 6439 Nicholson Hill, Hubbard Lake, Michigan.

13. Kaleb’s younger cousin owned an electric kids ride on car and she offered to drive Kaleb around the backyard located at 6439 Nicholson Hill, Hubbard Lake, Michigan.

14. Kaleb accepted his younger cousin’s offer and he sat in the passenger seat of the electric kids ride on car.

15. Shortly thereafter, Kaleb's younger cousin decided to drive underneath the Jayco Eagle Fifth wheel's slide out and the back of Kaleb's neck was severely lacerated by the razor sharp sheets of metal at the bottom of the slide out on the Jayco Eagle fifth wheel.

16. The injury sustained by Kaleb was a 7 x 3 cm laceration of his right posterolateral neck and the wound was closed surgically with 3-0 vicryl in multiple layers.

17. As a result of the above, Kaleb sustained severe and permanent injuries to his neck, including, but not limited to:

- a. Scarring of his neck;
- b. Emotional damages; and,
- c. All other damages learned through the course of discovery.

**COUNT I: PRODUCT LIABILITY - DEFECTIVE DESIGN
AND NEGLIGENCE**

18. Plaintiff reasserts and realleges each and every allegation contained in paragraphs 1 through 17 as if fully set forth herein.

19. Jayco owed a duty to the public in general, and to Kaleb in particular, to design, manufacture, produce, advertise, market, distribute

and sell their products in a manner that would ensure that they would be reasonably safe and fit for their intended use so as to eliminate risks of harm or injury, which were reasonably foreseeable.

20. Furthermore, Jayco owed duties to Kaleb to reasonably anticipate misuse and/or abuse of the Jayco Eagle Fifth wheel's slide out.

21. At the time that Jayco designed, manufactured, advertised, distributed and sold their products, specifically Jayco Eagle Fifth wheel's slide out, Jayco expressly and/or impliedly warranted that the product was safe and fit for its intended use.

22. Jayco breached the aforementioned duties in the following ways, including, but not limited to:

(a) Negligent design, manufacture, fabrication, advertising, marketing and/or selling their product, specifically Jayco Eagle Fifth wheel's slide out which was unreasonably dangerous and was not reasonably fit for its intended use;

(b) Negligent failure to incorporate into the design, manufacture, fabrication, advertisement and/or sale of the product, specifically Jayco Eagle Fifth wheel's slide out features which would render it safe and fit for its intended use, including, but not limited to warning labels and otherwise advising of the hazards of using the product, including the likelihood of an explosion or fire;

(c) Negligent defective design of the sheet metal located on the bottom of the Jayco Eagle Fifth wheel's slide out;

(d) Negligently failing to incorporate into the design, manufacture, fabrication, advertisement and/or sale of the product, specifically Jayco Eagle Fifth wheel's slide out adequate warnings and/or instructions advising that the product was unsafe;

(e) Other negligence and breaches of duty which may be learned through the course of discovery.

23. Jayco was grossly negligent and/or had actual knowledge that the sheet metal on the bottom of the Jayco Eagle Fifth wheel's slide out was dangerous and defective and that there was a substantial likelihood that the dangerous conditions would cause injury to the general public and specifically, Kaleb and yet Jayco willfully disregarded that knowledge, which resulted in serious and permanent injury to Kaleb.

24. As a result of Jayco's negligence, gross negligence and/or willful and wanton misconduct, Kaleb has suffered permanent injuries and damages including, but not limited to:

- (a) Physical pain and suffering;
- (b) Mental anguish;
- (c) Fright and shock;
- (d) Denial of social pleasure and enjoyments;
- (e) Embarrassment, humiliation or mortification;
- (f) Scaring;

(g) Reasonable expenses of necessary medical care, treatment and services;

(h) All other damages learned through the course of discovery.

WHEREFORE, Plaintiff respectfully request this Honorable Court enter Judgment in her favor and against Jayco in an amount in excess of \$75,000.00 and award costs, interest, and attorney fees so wrongfully incurred.

**COUNT II: PRODUCT LIABILITY - BREACH OF
IMPLIED AND EXPRESS WARRANTIES**

25. Plaintiff reasserts and realleges each and every allegation contained in paragraphs 1 through 24 as if fully set forth herein.

26. The Jayco Eagle Fifth wheel's slide out was sold to the public with dangerously defective razor sharp sheet metal on the bottom of the Jayco Eagle Fifth wheel's slide out.

27. The Jayco Eagle Fifth wheel's slide out's design was not reasonably fit for its expected or foreseeable use during its expected useful life.

28. The Jayco Eagle Fifth wheel's slide out was not misused or abused at anytime by anyone before, or during, Kaleb's encounter with the product.

29. Alternatively, if it is determined the Jayco Eagle Fifth wheel's slide out was misused or abused, same was reasonably foreseeable to Jayco at or before the time of design and manufacture.

30. the Jayco Eagle Fifth wheel's slide out's design was dangerously defective and failed because of faulty or improper design, manufacture, or assembly.

31. Jayco knew, or should have known, of the defect inherent in the design of its product in general and in the Jayco Eagle Fifth wheel's slide out in particular.

32. Moreover, the express statements on the Jayco Eagle Fifth wheel towable falsely claims that the product is safe when it was not, and thus Jayco breached an express warranty as well.

33. Jayco was grossly negligent and/or had actual knowledge that the sheet metal on the bottom of the Jayco Eagle Fifth wheel's slide out was dangerous and defective and that there was a substantial likelihood that the dangerous conditions would cause injury to the general public and specifically, Kaleb and yet Jayco willfully disregarded that knowledge, which resulted in serious and permanent injury to Kaleb.

34. As a direct and proximate result of the breach of implied and express warranties and/or gross negligence Kaleb was severely injured in the following ways:

- (a) Physical pain and suffering;
- (b) Mental anguish;
- (c) Fright and shock;
- (d) Denial of social pleasure and enjoyments;
- (e) Embarrassment, humiliation or mortification;
- (f) Scaring;
- (g) Reasonable expenses of necessary medical care, treatment and services;
- (h) All other damages learned through the course of discovery.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter Judgment in her favor and against Jayco in an amount in excess of \$75,000.00 and award costs, interest, and attorney fees so wrongfully incurred.

Respectfully submitted.

JOHNSON LAW, PLC

By: /s/ Michael E. Freifeld
THOMAS W. WAUN (P34224)
MICHAEL FREIFELD (P48198)
Attorney for Plaintiffs
140 E. 2nd St., Ste. 201
Flint, Michigan 48502
(810) 695-6100

Dated: October 29, 2020

DEMAND FOR JURY TRIAL

Plaintiff by her attorneys, JOHNSON LAW, PLC, requests a trial by jury.

Respectfully submitted.

JOHNSON LAW, PLC

By: /s/ Michael E. Freifeld
THOMAS W. WAUN (P34224)
MICHAEL FREIFELD (P48198)
Attorney for Plaintiffs
140 E. 2nd St., Ste. 201
Flint, Michigan 48502
(810) 695-6100

Dated: October 29, 2019